

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7307

Investigation into Vermont Electric Utilities' Use of       )  
Smart Metering and Time-Based Rates                               )

Order entered: 11/16/2009

**ORDER RE: MOTION FOR CLARIFICATION**

**I. INTRODUCTION**

On August 3, 2009, the Public Service Board ("Board") issued an Order re: Memorandum of Understanding, in which we approved (subject to certain clarifications and modifications) a Memorandum of Understanding ("MOU") among many of the parties to this proceeding. On August 19, 2009, Central Vermont Public Service Corporation, Green Mountain Power Corporation, the Vermont Electric Cooperative, Inc., and the Group of Municipal Electric Utilities<sup>1</sup> (collectively, the "Utilities") filed a motion requesting that we clarify our Order as it relates to application of the economic "used-and-useful" test. In this Order, we provide additional guidance for the Utilities.

**II. DISCUSSION**

One of the major issues addressed in our August 3 Order was the extent to which utilities that deploy advanced metering infrastructure ("AMI") could receive assurances of cost-recovery for those investments. Based upon the MOU, we determined that we would permit utilities to seek prior approval of AMI investments, which could provide a greater assurance that they could recover their costs. In addition, we specifically addressed the utilities' concern about the potential application of the economic used-and-useful test. We concluded that:

---

1. Barton Village, Inc. Electric Department, Village of Enosburg Falls Water & Light Department, Town of Hardwick Electric Department, Village of Hyde Park Electric Department, Village of Jacksonville Electric Company, Village of Johnson Water & Light Department, Village of Ludlow Electric Light Department, Village of Lyndonville Electric Department, Village of Morrisville Water & Light Department; Village of Northfield Electric Department, Village of Orleans, Inc. Electric Department, Town of Readsboro Electric Light Department, and Swanton Village, Inc. Electric Department.

Based upon the considerations set out in the PFD, including the risks associated with technological changes, we conclude that utility investments as part of an approved AMI Implementation Plan should be treated *as if* they are economically used-and-useful.<sup>2</sup>

This special treatment was not, however, unequivocal. The Order also explained limitations on the scope of the assurances we provided:

Our determination on the treatment of these investments under the economic used-and-useful test is subject to the same limitations that apply to assurances of rate-recovery under the prudence standard. It only applies to investments and expenses reviewed during the pre-approval process. Moreover, the utility bears a continuing obligation to monitor and adapt its Plan in light of changing circumstances. *Our determination that a Plan is acceptable will not shield a utility from a subsequent investigation and potential disallowance based upon the economic used-and-useful principle if events following approval should have led to an alteration of the AMI deployment.*<sup>3</sup>

The Utilities' motion states that they do not "understand the full import of the final sentence of this holding." They contend that there are certain conditions that utilities cannot control, such as the market price for AMI technologies or power, the development of market alternatives affecting AMI, and the pace and direction of technology changes that affect the usefulness of purchased smart metering infrastructure. According to the Utilities, these conditions are outside of the utility's control and could "render the utility's investment not economically used and useful." The Utilities assert that the last sentence could be interpreted to permit a disallowance under the economic used-and-useful principle for events such as these that are outside the control of the utilities. They maintain that this interpretation could be read to reverse the protections otherwise being provided under the Order.

Accordingly, the Utilities ask that the Board explain that the italicized sentence quoted above was intended to put utilities on notice that they must act prudently in the implementation of their approved AMI Implementation Plans or risk disallowances for their failures to take appropriate actions when they reasonably should in the face of changed circumstances. In addition, the Utilities recommend that the Board clarify the reference to the economic

---

2. Order at 36.

3. *Id.*

used-and-useful test so that investments that are prudently made under approved Plans will continue to be treated as if they are used and useful where the utility is without means to change the underlying circumstances that make the investment suspect under the economic used-and-useful test.

No party commented on the Utilities' motion.

The Utilities' understanding of the August 3 Order was correct. Where a utility cannot change the underlying circumstances that have called into question whether a particular investment was used-and-useful, AMI investments that are both (1) prudent at the time they are made and (2) consistent with an approved AMI plan will be treated as if they are economically used-and-useful. We note that this ruling is readily apparent from the August 3 Order.

As the Utilities themselves explained, their potential reading of the italicized sentence would have the effect of largely obviating the increased cost-recovery assurance that the Order specifically provided. Quite clearly, it would be unreasonable to read our Order as providing that utility AMI investments would be treated as if they were economically used-and-useful while simultaneously exposing utilities to a broad range of potential disallowances under that principle.

**SO ORDERED.**

Dated at Montpelier, Vermont, this 16<sup>th</sup> day of November, 2009.

<u>s/James Volz</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/David C. Coen</u>	)	BOARD
	)	
	)	OF VERMONT
<u>s/John D. Burke</u>	)	

OFFICE OF THE CLERK

FILED: November 16, 2009

ATTEST: s/Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*